

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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CHARLES WHITTINGTON,
individually, and on behalf of
others similarly situated,

No. 2:20-cv-00600 WBS CKD

Plaintiff,

MEMORANDUM AND ORDER RE:
DEFENDANT'S MOTION TO STAY

v.

WALGREEN CO., an Illinois
corporation, and DOES 1-50,
inclusive,

Defendants.

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Plaintiff Charles Whittington filed this action
individually, and on behalf of other similarly situated, against
defendants Walgreen Co. and Does 1 through 50, alleging several
wage and hour claims under the California Labor Code. Before the
court is defendant Walgreen Co.'s motion to stay the proceedings.
(Docket No. 7.)

I. Relevant Factual Information

On November 6, 2018, a wage and hour class action

1 lawsuit was filed against defendant Walgreen, entitled Lucas
2 Mejia v. Walgreen Co., Case No. 2:19-cv-00218-WBS-AC, which is
3 also currently pending before this court. The Mejia action
4 alleges the following wage and hour claims: (1) failure to pay
5 minimum wages; (2) failure to pay overtime wages; (3) failure to
6 provide meal periods; (4) failure to authorize and permit rest
7 periods; (5) failure to provide accurate itemized wage
8 statements; (6) failure to timely pay all wages after separation
9 of employment; and (7) unlawful business practices, Cal. Bus. &
10 Profs. Code §§ 17200, et seq. (Declaration of Christopher J.
11 Archibald ("Archibald Decl."), ¶ 2, Ex. A). Plaintiff Mejia
12 alleged his claims individually and on behalf of current and
13 former non-exempt employees who have worked in defendant's
14 distribution centers. (Archibald Decl., Ex. A, Mejia Compl. ¶ 1).

15 Over a year later, on January 24, 2020, plaintiff
16 Whittington -- a former employee who worked in one of defendant's
17 California distribution centers -- filed this wage and hour class
18 action against defendant alleging the following claims: (1)
19 failure to provide required meal periods; (2) failure to provide
20 required rest periods; (3) failure to pay overtime wages; (4)
21 failure to pay minimum wages; (5) failure to pay all wages due to
22 discharged and quitting employees; (6) failure to maintain
23 required records; (7) failure to furnish accurate itemized wage
24 statements; (8) failure to indemnify employees for necessary
25 expenditures incurred in discharge of duties; (9) unfair and
26 unlawful business practices, Cal. Bus. & Profs. Code §§ 17200, et
27 seq.; and (10) penalties under the Private Attorneys General
28 Act, Cal. Labor Code §§ 2698-2699.5. (See generally Compl.

1 (Docket No. 1)..) Like the Mejia action, this action seeks to
2 represent the same putative class comprised of all current and
3 former non-exempt employees of defendant who work or worked at
4 its distribution centers in California. (Compl. ¶ 5.) Defendant
5 now moves to stay the present action pending the resolution of
6 Mejia.

7 II. Discussion

8 "The first-to-file rule allows a district court to
9 transfer, stay, or dismiss an action when a similar complaint has
10 already been filed in another federal court." Kohn Law Grp.,
11 Inc. v. Auto Parts Mfg. Miss., Inc., 787 F.3d 1237, 1239 (9th
12 Cir. 2015). The rule "is intended to serve[] the purpose of
13 promoting efficiency well and should not be disregarded lightly."
14 Id. at 1239.

15 "In applying the first-to-file rule, a court looks to
16 three threshold factors: '(1) the chronology of the two actions;
17 (2) the similarity of the parties; and (3) the similarity of the
18 issues.'" Adoma v. Univ. of Phoenix, Inc., 711 F. Supp. 2d 1142,
19 1146 (E.D. Cal. 2010) (citing Alltrade, Inc. v. Uniweld Prod.,
20 Inc., 946 F.2d 622, 625 (9th Cir. 1991)). "The issues in both
21 cases . . . need not be identical, only substantially similar."
22 Kohn Law Grp., 787 F.3d at 1240-41 (citing Int'l Fid. Ins. Co. v.
23 Sweet Little Mex. Corp., 665 F.3d 671, 677-78 (5th Cir. 2011)).
24 "If this action meets the requirements of the first-to-file rule,
25 the court has the discretion to transfer, stay, or dismiss the
26 action." Id.

27 Here, plaintiff does not contest (1) that the Mejia
28 action was filed before the present action, (2) that the

1 defendant and proposed putative classes in the Mejia and the
2 instant action are the same, and (3) that the issues and claims
3 involved in both actions are substantially similar. (See
4 generally Opp'n (Docket No. 8).) Plaintiff argues only that the
5 claims alleged in both actions are not identical. (Id. at 1.)
6 However, because only two of plaintiff's ten claims do not
7 overlap with the Mejia action,¹ the court finds that there is
8 "'substantial overlap' between the two suits" and that the issues
9 are therefore substantially similar. See Kohn Law Grp., 787 F.3d
10 at 1241 (quoting Harris Cty., Tex. v. CarMax Auto Superstores
11 Inc., 177 F.3d 306, 319 (5th Cir. 1999)). Because this action
12 meets all three requirements of the first-to-file rule, the court
13 will exercise its discretion to stay the proceedings.² See
14 Adoma, 711 F. Supp. 2d at 1146.

15 IT IS THEREFORE ORDERED that defendant's motion to stay
16 (Docket No. 7) be, and the same hereby is GRANTED. The Clerk is
17 instructed to administratively close the file in this case,
18 subject to its being reopened upon application of any party after
19 final disposition of the case in Mejia v. Walgreen Co., No 2:19-
20 cv-00218 WBS-AC.

21 Dated: June 25, 2020


WILLIAM B. SHUBB

22 **UNITED STATES DISTRICT JUDGE**

23 _____
24 ¹ The only non-overlapping claims are plaintiff
25 Whittington's claims for failure to maintain required records and
failure to indemnify for necessary expenditures incurred in the
discharge of duties.

26 ² The court notes that both cases are before the same
27 judge, which further supports the court's conclusion that staying
28 the proceedings here would "promot[e] efficiency." See Kohn Law
Grp., 787 F.3d at 1239.